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Planning Commission Date: April 14, 2004

Item No.

**MILPITAS PLANNING COMMISSION AGENDA REPORT**

Category: New Business

Report Prepared by: Kim Duncan

Public Hearing: Yes: \_\_\_\_\_ No:  X

Notices Mailed On: N/A

Published On: N/A

Posted On: N/A

**TITLE:** 'S' ZONE APPROVAL AMENDMENT (SA2004-13)

**Proposal:** Request to install an 8-foot tall property fence along the rear and side portions of two adjacent properties in the Midtown zoning district.

**Location:** 244-250 & 260 South Main Street

**APN:** 086-27-013 and 014

**RECOMMENDATION:** Approval with conditions

**Applicant:** Ramon Jim Rocha, Jr., 10291 Kenny Land, San Jose, CA 95127

**Property Owner:** Kathy A. Simmons, 10 Boulevard Court, Walnut Creek, CA 94595

**Previous Action(s):** 'S' Zone approval and amendment, Use Permit approval

**General Plan Designation:** Mixed Use

**Present Zoning:** Mixed Use with "S" Zone overlay ("MXD-S")

**Existing Land Use:** Vacant

**Agenda Sent To:** Applicant and owner

**Attachments:** Plans, letters from applicant dated November 3, 2004 and March 17, 2004

**PJ No.** N/A

**BACKGROUND**

This application was continued from the March 24, 2004 Planning Commission meeting to allow the applicant additional time to revise and submit plans for staff review. However, the property

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owner has encountered difficulty in obtaining the revised plans and requests to move forward with the application with conditions.

In 1962, the Planning Commission approved 'S' Zone approval for a new 2,200 square foot commercial building located at 260 South Main Street. In 1978, the Planning Commission approved a Use Permit and 'S' Zone approval amendment for an automotive repair (North Valley Foreign Auto) shop and building signage.

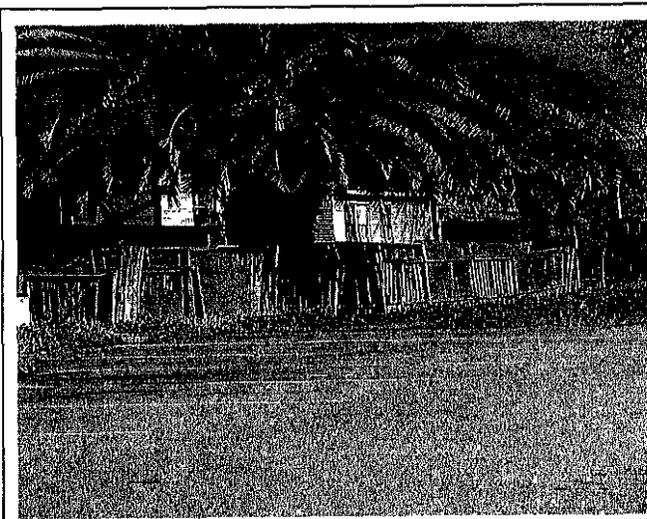
In addition, two residential duplex buildings were approved at 244 and 250 South Main Street, however staff research was unable to determine the approval dates. Subsequently, both duplexes were demolished in 2002.

The two properties have been subject to numerous acts of vandalism, littering and trespassing by transients crossing from the Union Pacific Railroad tracks. According to Police Department records, there have been eight (8) reported cases of such infractions at the property site since 2000.

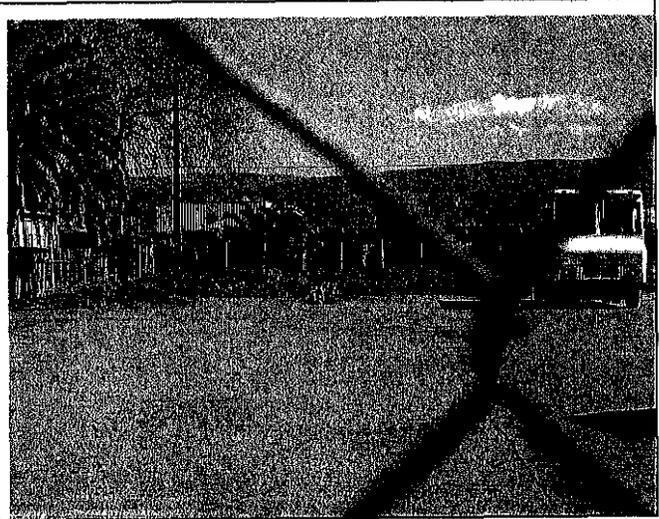
### Site and Area

The project site consists of two adjacent parcels located within the Midtown zoning district amongst a mix of residential, commercial, industrial and quasi-public uses. The northern parcel is approximately 14,820 square feet and two residential duplexes were recently demolished, leaving the parcel a vacant lot. The adjacent parcel to the south is approximately 10,168 square feet with a vacant 2,200 square foot building (former North Valley Foreign Auto). Both parcels are bound on the west by South Main Street and on the east by Union Pacific Railroad, just north of Sinnott Lane. Primary access for both parcels is provided off South Main Street.

Surrounding land uses include Saint John's Catholic Church/School, Milpitas Towing and Ola's Exotic Coffee to the west, Jacklin Dental and residential to the north, residential duplexes and Mr. Brakes to the south, and Preston Pipeline east of the Union Pacific Railroad tracks.



*Existing fence to the north*



*Existing fence to the east (rear of property)*

Existing fence materials on the project site perimeter consists of:

- 4-foot to 7-foot tall, deteriorating wood fence on the north (left side) property line.
- 8-foot tall, damaged chain link fence with slats on the east (rear) property line (adjacent to Union Pacific Railroad).
- 6-foot chain link fence on the south (right side) property line.

## THE APPLICATION

The application is submitted pursuant to Section 54.11-4 (Fences-Exceptions) which provides for fences at the rear and side yards in any "S" Combining District to be eight (8) feet maximum height when approved by the Planning Commission. The applicant proposes to install an eight foot tall fence along three sides of the rear portion of two adjacent parcels.

## PROJECT DESCRIPTION

The applicant is requesting approval to construct a new, 8-foot tall solid wood fence on three sides of the rear portion of two adjacent parcels. The existing fence at the north and east side of the site are deteriorating and have been damaged by vandalism. The proposed fence would be located on the north and east property lines, as well as midway through the parcels (75 feet from the rear property line) as shown on the site plan. The applicant is not proposing new fencing along the south property line, which has an existing 6-foot tall chain link fence. In addition, a gate is proposed to provide access from the front portion of the property to the rear.

The plans submitted by the applicant indicate the proposed fence will be constructed of chain link fencing with no proposed slats. However, the property owner is requesting the fence be constructed of high quality, natural wood posts and planks to create a visually appealing and durable fence in keeping with the Midtown design guidelines. Prior to building permit issuance, the property owner has agreed to submit new plans detailing the proposed wood fence.

## ISSUES

### Conformance with the General Plan and Midtown Specific Plan

The proposed use does not conflict with any General Plan Policies, and is consistent with Implementing Policy 2.a-I-23. This policy is intended to ensure that development in the Midtown area is in keeping and conforms to the adopted design guidelines contained in the Midtown Specific Plan. In addition, the Midtown Specific Plan Design Guidelines encourage materials that convey a sense of durability and permanence. The proposed fence, as conditioned, will use high quality, natural wood materials, which convey a sense of durability and permanence, therefore meeting the intent of Implementation Policy 2.a-I-23 and Midtown Specific Plan design guidelines.

### Conformance with the Zoning Ordinance and 'S' Zone Combining District

The project complies with Section 54.11-4 of the Milpitas Zoning Ordinance in that fence heights, to a maximum of eight (8) feet, may be approved by the Planning Commission in any zoning district combined with the "S" Combining District.

The project also complies with Section 42.03 the "S" Zone Combining District in that the proposed fence, as conditioned, is attractive and harmonious with the project site and

surrounding buildings. The natural wood materials used are durable and result in a high quality and aesthetically pleasing fence.

### **Community Impact**

Staff concludes that the project, as conditioned, will meet the requirements as set forth within the City of Milpitas regulations and will not create a negative community impact. The proposed fence will deter trespassing, vandalism and littering on the property, as well as be constructed of high quality, natural wood material, therefore staff concludes the fence will have a positive community impact. In addition, staff concludes the fence, as conditioned, will not result in any adverse visual impacts from the proposed project in terms of height, location, color or materials.

### **Conformance with CEQA**

The proposed project is categorically exempt from further environmental review pursuant to Class 11, Section 15311 ("Accessory Structures") of the California Environmental Quality Act (CEQA) Guidelines.

### **RECOMMENDATION**

Recommend approval by the Planning Commission of the 'S' Zone Approval Amendment SA2004-13 based on the Findings and Recommended Special Conditions listed below:

### **FINDINGS**

1. The proposed project, as conditioned, is consistent with the General Plan and Midtown Specific Plan in that the natural wood materials of the proposed fence conveys a sense of durability and permanence, which is in keeping with and conforms to the adopted design guidelines/requirements contained in the Midtown Specific Plan
2. The proposed project is consistent with the Zoning Ordinance in that fence heights, to a maximum of eight (8) feet, may be approved by the Planning Commission in any zoning district combined with the "S" Combining District.
3. As conditioned, the proposed fence is compatible and aesthetically harmonious with adjacent and surrounding development in that the 8-foot tall fence will be constructed of solid, natural wood material and will enhance the surrounding area.
4. The proposed project is categorically exempt from California Environmental Quality Act review as per CEQA Section 15311 (Accessory Structures).

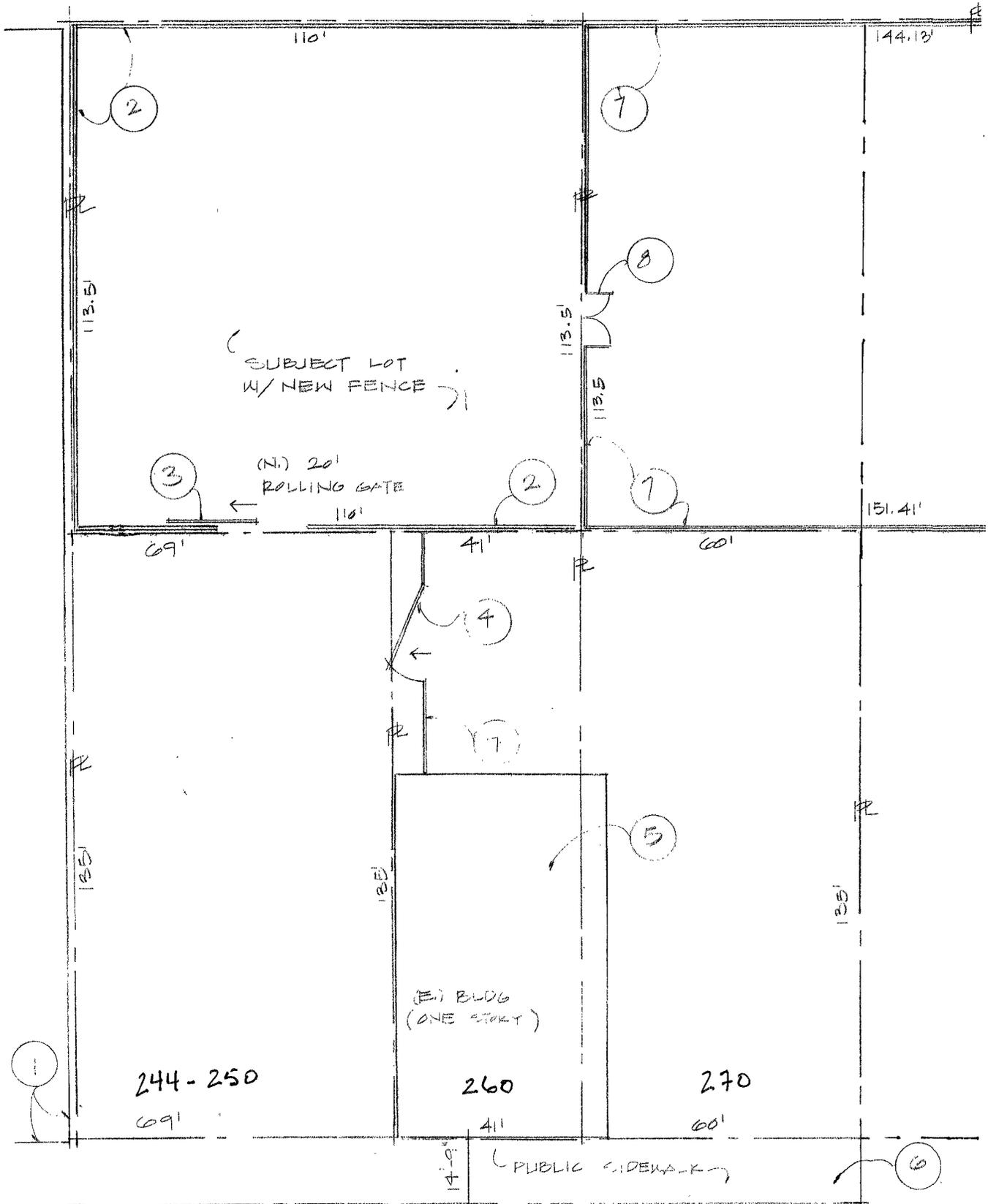
### **RECOMMENDED SPECIAL CONDITIONS**

1. This 'S' Zone Approval-Amendment No. SA2004-13 is for the approval of an eight (8) foot tall fence, constructed of natural wood materials, and located as shown on approved plans dated May 12, 2004. (P)
2. Prior to building permit issuance, the applicant/property owner shall submit revised plans accurately showing all property lines (based on recorded information), existing buildings and structures on site, as well as detailed elevations of the proposed fence. The design of the wooden fence shall be to the satisfaction of the Planning Manager. (P)

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3. Any modification to the fence will require a Site and Architectural Review Amendment by the Planning Commission. Any other minor modifications, as per Section 42-10-2 of the Milpitas Zoning Ordinance to approved plans may be approved by the Planning Division or Planning Commission Subcommittee. (P)
4. This project shall be conducted in compliance with all appropriate local, state, and federal laws and regulations. (P)
5. The applicant's plan for the building permit issuance must show the property lines correctly based on the record information. (E)

(P) = Planning Division  
(E)=Engineering Division



SITE PLAN

1/2" = 1'-0"





**Ordinance**

Mayor McHugh noted that staff had proposed language to review regarding height limitations. Community Development Manager Smith distributed copies and reviewed his August 28, 1992, memo regarding height regulations. Mr. Smith reported that staff was recommending replacing Sections 45.04-1, 2, 3 and 4 with new Sections 45.04-1, 2, 3 and 4; Section 45.04-1 would be revised to read "20 ft." instead of 17 ft. and would be measured from a warped plane parallel to finished grade (instead of "from the finished grade to the ridge line of the building"); Section 45.04-2 would not revise the height but would add "measured from a warped plane parallel to finished grade"; Section 45.04-3 would not revise the height but would add "measured from a warped plane parallel to finished grade anywhere in the hillside"; and Section 45.04-4 would revise 17 and 27 ft. and two stories to 15 and 20 ft. and one story and add the language "measured from a warped plane parallel to finished grade." Mr. Smith noted that 20 ft. maximum height would provide more flexibility for roof structures. Councilmember Skyrud commented that he did not want to see any roofs measured from the warped plane; that came out of the Hillside Committee, the Planning Commission and until this evening, from staff; and he wanted to see it measured from the finished grade to the ridge line. Councilmember Lee inquired why staff wanted to bring back the warped plane measurement. Community Development Manager Smith responded that there would be nothing wrong with measuring from the finished grade if every house was built on flat land and it becomes necessary for a definition of what you are measuring from. Principal Planner Reliford explained that it would allow more flexibility for the types of roofs being built in the hillside area. Councilmember Skyrud said he wanted it measured from the finished grade to the ridge line; Councilmember Lee agreed. Mayor McHugh inquired if staff would have any problem computing finished grade. Mr. Smith responded that if it becomes difficult, it can always be dealt with in the future. Councilmember Skyrud said he would also like to keep the height at 17 ft. Councilmember Lee said that she had no problem with the extra three feet; however, she still wanted it measured from the finished grade. Councilmember Skyrud pointed out that it could come back as a variance with the topography showed that it would have to go higher and it would be addressed on case by case. Mayor McHugh inquired if it was the consensus of the Council to go with 20 ft. and measure the height from the finished grade. Councilmember Skyrud said it should be 17 ft. and consider variances as the law will allow, which was the Planning Commission recommendation. Community Development Manager Smith suggested that if the Council wanted to leave it the way it is, the four sections on page 1 of his memo would remain but staff would recommend that Section 45.04-4 be eliminated altogether. Councilmember Skyrud expressed concern that with the changes made to the ordinance, that they will be consistent with the General Plan.

Mayor McHugh proceeded to review the proposed ordinance page by page. With respect to the section on geotechnical investigation, Councilmember Skyrud inquired how the City's consulting engineering geologist (Mr. Carpenter) was selected. Mr. Smith responded that Mr. Carpenter was selected by a process he was not familiar with, but Mr. Carpenter has been the City's expert and has been the reviewing geologist for every project that has come through the City for many years. Councilmember Skyrud asked for a report on how consultants are selected, how rates are established, and suggested that the consultant's contract be reviewed every three years.

Mayor McHugh noted there was a suggestion to add a Section 45.01-7 to address the Pacific Flyway. Councilmember Lee suggested keeping the wording from the old ordinance that all environmental concerns be included in order to take into account

the nationally recognized Pacific Flyway Habitat; she wanted to keep it in so that future generations will know that there is this flyway. Councilmember Skyrud expressed concern in being specific about the Bald Eagle since the Pacific Flyway covers everything. Mayor McHugh commented that if including this section was a consensus, then the remaining sections would need to be renumbered.

Councilmember Skyrud called attention to Section 45.03-6 "The minimum parcel size for lots created in accordance with the above formula shall be three acres." Mayor McHugh suggested considering clustering and going with 10% of the land space which was discussed at the prior meeting. The Mayor also noted there was a question if that should be separated into more than one area, and he suggested it be only one area. Councilmember Skyrud suggested that on some parcels, allowing more than one cluster might hide the clusters; allowing only one cluster may cause that cluster to become more visible. Community Development Manager Smith suggested also looking at Section 45.07-2, the reference to PUDs, where clustering could be addressed. City Manager Connolly commented that he didn't know how Section 45.03-6 got into the ordinance; it should be included in the PUD section since in a straight subdivision you can't have anything less than ten acres. It was the consensus of the Council to delete Section 45.03-6 and to add a new section (c) to 45.03-8 stating the Council's intent that in no event shall the number of units be any greater than they would have been had there been no lot line changes.

With respect to height regulations, Councilmember Skyrud said he would like to see 17 and 27 ft. remain, measured from the ridge line to the finished grade. Community Development Manager Smith suggested dropping Section 45.04-4. City Manager Connolly expressed concern if the slope on the land is such that there are two finished grades and inquired if the Council wanted language included to address such a situation. Councilmember Skyrud suggested that in looking at the house from any direction, it be measured from the lowest finished grade to the highest ridge line. Mr. Connolly noted that staff would include Councilmember Skyrud's language to be sure everyone understands. Mayor McHugh inquired if a property owner who was attempting to build would be allowed to request a variance. The City Attorney responded they could if the topography of their parcel was such that they could demonstrate hardship that would satisfy a variance requirement. It was the consensus of the Council to eliminate Section 45.04-4.

Councilmember Skyrud said he would like to have something in the ordinance to make it clear how side yards are determined. City Manager Connolly suggested adding a Section 45.05-1-1 that "side yards will be determined by the Planning Commission" so it will always be determined or "where side yards are not clear, they will be determined by the Planning Commission." Mayor McHugh inquired what the ramifications would be of requiring a 40 ft. setback on all sites. Community Development Manager Smith responded that with the ten acre minimum criteria, it probably wouldn't be a problem; however, there are still lots of record that are less than ten acres, and it could be a problem for existing smaller lots. The Mayor asked Councilmembers Lee and Skyrud if that would be preferable. Councilmember Skyrud expressed concern that it would create longer driveways and result in more asphalt. It was the consensus of the Council to leave Section 45.05 (Yard Requirements) as currently worded.

Mayor McHugh inquired if the Council wanted to include a silhouette drawing as an additional requirement in Section 45.06-5. It was the consensus of the Council to leave it out. Councilmember Skyrud suggested that fencing in the crestline zone of

protection area be subject to Planning Commission approval; it was the consensus of the Council to include a sentence in Section 45.06-4 that fencing in the crestline zone of protection will be allowed subject to Planning Commission approval.

Mayor McHugh inquired if the Council wanted to include a reference in Section 45.07 (Special Provisions for PUD's in Hillside) to a minimum lot size or reference to clustering. Councilmember Lee suggesting adding a statement that clustering is encouraged to maximize open space with zero lot line as an incentive. Mayor McHugh said that the place to make changes would be Section 45.07-2 and clustering on 10% of the property might be the way to go; it would not set any limit and the result would be a more compact impact with reduced infrastructure. Mayor McHugh suggested the intent is that clustering is encouraged, there is no minimum lot size and the area of clustering should not exceed 10% of the gross area. Councilmember Skyrud pointed out that Section 45.07-3 should be deleted.

Mayor McHugh noted that there was discussion that a subsection be added to Section 45.08 that there be an advisory vote of the people before any open space easement is modified in any way. Councilmember Skyrud inquired if it should be specific that the vote be at a consolidated election to avoid having to hold a special election. City Attorney Faithfull suggested that it state "at the next regularly scheduled election."

Mayor McHugh inquired if there were any changes to Section 45.09 (Site and Architectural Approval). Councilmember Skyrud suggested Section 45.09-2 be amended to read "prior to construction of any new structure."

Councilmember Skyrud, with respect to Section 45.16, said that he did not like pony walls and would like to keep that open so that you can visually see through a pony wall and that it not be enclosed. The City Manager said this could be accomplished by adding a sentence that there shall be no wall covering below the underfloor clearance. Following further discussion, Councilmember Skyrud suggested adding a sentence that "the underfloor clearance shall not be enclosed."

Mayor McHugh commented that there was discussion that the Council may want to drop the impervious surface coverage section. Councilmember Lee pointed out that the title of Section 45.17 should include "Accessory Structure." Councilmember Skyrud said he would like to keep impervious surface coverage in this section. Community Development Manager Smith said that if the Council wanted to keep it in, staff would suggest revisions to Sections 45.17-3 and 45.17-4 as previously outlined in the staff memo dated August 24, 1992, for clarification. The City Manager pointed out that "excluding" should be changed to "including the building footprint" in both these sections. Councilmember Skyrud suggested that Section 45.17-3 include a maximum of 8,000 sq. ft. for impervious surface on the site and 30,000 sq. ft. in Section 45.17-4. Community Development Manager Smith noted that for clarification on accessory buildings, staff suggested adding a new Section 45.17-5 that reintroduces the maximum size of an accessory structure shall not exceed 1,200 sq. ft.

Councilmember Skyrud called attention to Section 45.18-5(e) regarding trees and noted that some cities provide in their ordinances for some negotiating when trees are removed so that if someone wants to take out a tree, it is replaced with a certain number of trees. Councilmember Skyrud asked if the Council might want to consider such a provision since the hills are lacking trees in certain areas. Mayor McHugh suggested that Section 45.18-5(e) could be modified. Community

Development Manager Smith explained the purpose of the grading section is to minimize grading that disturbs trees; if the goal is to replace trees, there may be a more appropriate section and suggested Section 45.18-3(e) which addresses tree removal. Mayor McHugh suggested that Section 45.183(e) be modified to read "should" instead of "shall" not be removed" at the end of the first sentence and "if removal of said trees is necessary, they should be replaced with similar trees on a ration of 5 to 1." Councilmember Skyrud suggested that "if removal is permitted, it shall be replaced on a 5 to 1" because then the Planning Commission would approve. Mayor McHugh said he liked Councilmember Skyrud's suggestion.

Councilmember Skyrud stated that when this ordinance and General Plan is adopted, he believed if the developer (of the Murphy Ranch) wanted to come in and straight subdivide the western face of the Murphy Ranch, he could put some number like 30 homes on the western face; the Council's action tonight does nothing to prevent that and the developer could have done a similar thing prior to this three-year process. Community Development Manager Smith responded that the developer could have done it with more units. Mayor McHugh noted that the clustering might be an incentive to take advantage of a PUD. Councilmember Skyrud inquired what would be permitted (under the new ordinance) on the property known as Lee's Orchard if that parcel were vacant today. Mr. Smith responded they could build five houses or less, depending on the slope. Councilmember Skyrud said he wanted the public to know that when they see a plan for homes on the hillsides for ranchettes, this does not stop it; he felt some people will be disappointed because they thought nothing would be allowed on the western face; what has been done after three years is reduce development on the western face and any time a Council has reviewed this, the number of units in the hillsides has been reduced. Councilmember Skyrud said that the Mayor may want to comment on the editorial in the San Jose Mercury. Mayor McHugh commented that the editorial was basically commending Los Gatos for five acre minimum lots as being extremely progressive; in the case of Milpitas, the Mercury felt requiring twice that, or 10 acres, was insufficient.

Councilmember Lee requested that after the full Council is seated, consideration of the formation of an Open Space Assessment District within the City be agendaized. Councilmember Lee said she feared that down the line there will be pressure coming into the City to build and she would like to start buying the land now. Mayor McHugh said he would like a report addressing that; a measure could be put on the ballot or the Council could consider joining existing open space districts. Councilmember Skyrud said he was supportive of Councilmember Lee's suggestion and anything the Council can do to protect the western face of the hills. Councilmember Skyrud asked the City Attorney if the whole Council could have input on something like that. The City Attorney responded that a report on the possibility of forming an Open Space Assessment District and the procedure for doing it could be done in the form of a status report; however, she would have to look into in more detail to see what the conflict of interest ramifications would be. Mayor McHugh noted the report would not only address formation of our own but also the potential of joining existing districts.

Mayor McHugh inquired if there were any questions from the Council as far as the proposed changes; there were none.

**Ord. No. 38.673  
(Introduce)**

**Community Development Manager Smith read the title of Ordinance No. 38.673 amending sections of Chapter 10 and sections of Chapter 1, Title XI of the Milpitas Municipal Code.**

**MOTION to waive the reading beyond the title.**

**M/S: Skyrud, Lee. Ayes: 3 Abstain: 2 (Lawson, Livengood)**

**MOTION to introduce Ordinance No. 38.672 as modified by the Council.**

**M/S: Skyrud, Lee. Ayes: 3 Abstain: 2 (Lawson, Livengood)**

**Community Development Manager Smith commented that staff would bring the ordinance back for second reading and adoption on September 15; there will also be some additional steps necessary for all of the hillside properties to comply with the new text. Councilmember Skyrud inquired if the Planning Commission (and City Council) would be able to act on the Zoning or would they have to draw lots again. The City Attorney said she would have to look into it. Mayor McHugh said he imagined that thirty days after the adoption of the ordinance, the Council will have to act to terminate the moratorium.**

**ADJOURNMENT**

**There being no further business, Mayor McHugh adjourned the meeting at 11:35 p.m.**

**JAMES P. CONNOLLY  
City Manager**

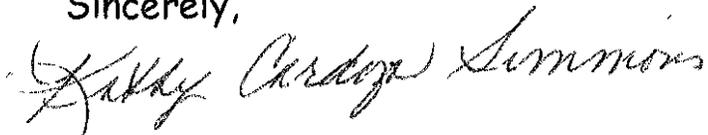
**GAIL BLALOCK  
City Clerk**

March 17, 2004

Dear Kim,

I am requesting that you continue the application for the fence at 260 S. Main to the April 14 Planning Commission meeting. We were unable to get the revised plans to the City in time for the March 24 meeting. We are changing our request from a chain link fence to a wooden fence.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Cardoza Simmons".

Kathy Cardoza Simmons

**RECEIVED**

**MAR 19 2004**

**CITY OF MILPITAS  
PLANNING DIVISION**

November 3, 2003

To the Milpitas Planning Department,

I am applying for a fence permit for work to be done on my property at 244, 250, 260, and 270 South Main Street in Milpitas.

I am requesting a fence permit in order to secure the property. There have been a multitude of problems with residents from across the tracks and homeless using the property as a thoroughfare. Specifically:

Homeless people were arrested for breaking and entering at 250 S. Main in Spring, 2002.

A homeless person, with matches, was found by the Milpitas Fire Dept. on property in Fall, 2002.

Red paint was illegally dumped in June of 2003

A 5' H x 22' rolling gate was stolen in June, 2003

Recently individuals have been entering the Milpitas Towing Yard from the Parking lot.

The fence along the railroad will prevent people from crossing onto the property from the Eastern side of the property. The fence at the back of the parking lot will prevent people from driving on to the property and will prevent illegal dumping.

Please feel free to call me if you have any questions.

Sincerely,



Kathy Cardoza Simmons

925-937-7626